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A TRUSTEE IN BANKRUPTCY WHO TURNED A BANKRUPT BUSINESS INTO A SOLVENT GOING CONCERN.

The administration of business by courts has not always been such as to encourage business men to trust their business affairs to the management of judicial officers. Incompentence on the part of receivers and trustees plus high charges for legal services have disappointed debtors and creditors alike with respect to the way which a court handles the affairs of a business committed to its care.

We have always taken the position that the responsibility for this failure to administer economically the affairs of a business concern by a court officer was upon the particular court in charge of such proceedings. Where the court is indifferent, turns such matters over to some personal or political friends, exercises no personal supervision over the business, allows all claims for expenses as a matter of course and makes liberal allowances to trustees, receivers, referees, attorneys, etc., the administration is a failure, and the court is properly chargeable with the loss sustained by debtors and creditors.

This failure has been so common that we take unfeigned delight in calling attention to a "unique" case in bankruptcy where the trustee, with the co-operation of the court, so administered a bankrupt estate as to enable it to pay one hundred per cent to creditors and turn back a large surplus to the debtor. The case was that of the Yaryan Rosin & Turpentine Co., of Brunswick, Ga., a bankrupt. The facts are disclosed in the final report of George C. Smith, the trustee in bankruptcy.

It appears from the report that the Yaryan Rosin & Turpentine Company of Brunswick, one of the largest manufacturers of naval stores in the world, went into bankruptcy on June 10, 1918, and for a year and one month was operated by the receivers. This, however, proved unsuccessful, and on July 10, 1919, Judge Beverly D. Evans appointed George C. Smith of Brunswick trustee in bankruptcy. The Yaryan Company's liabilities amounted to $574,172.01 and during the period that the bankruptcy lasted the total amount received was $2,120,457.78 and the total disbursements amounted to $1,450,555.07. The net amount realized after deducting expenses for the conduct of the business was $669,903.71. The distribution of the assets was as follows: Total fees and expenses of administration, $59,697.15; amount paid to creditors with liens, $133,333.36; amount paid general creditors, $440,838.65. The undistributed balance was $36,045.55.

This case was not referred to a referee, but was handled under the personal supervision and direction of Judge Beverly D. Evans of the United States court. The amount paid on account of commissions was $31,968.15 and the attorneys' fees amounted to $7,275. The apraisers were paid $2,750, the trustee $15,000, and the special master, $1,000.

By order of the court, on February 1, 1920, the Yaryan property was released to the Glidden Company of Cleveland, and the affairs of the trustee wound up and Mr. Smith discharged with the thanks and congratulations of the court for the able administration of his office.

In passing upon the services rendered by the trustee in bankruptcy, and his counsel, Judge Evans said:

"The management by the trustee resulted in most phenomenal success." * * *

"When the trustee delivered the assets to the Yaryan Company, it will be seen that its financial condition was that of a solvent, going concern. This unusual result was brought about by the superb management and administration of the trustee, in which he had the constant attention and advice of his attorney.

"The administration of the Yaryan Company occupied a great deal of the time of the court, and the trustee and his at-

torney were in almost weekly consultation with the court as to matters which arose in the administration."

The first thing that will strike the ordinary lawyer with surprise is the small allowance of $15,000 to Mr. Smith for his magnificent administration of a business involving over two million dollars of quick assets. We are inclined to believe that $25,000 would have been more reasonable in view of the extraordinary services rendered by Mr. Smith. But we do say this: That if the services of Mr. Smith were worth $15,000 the ordinary trustee should not only not receive very much less, but might be properly chargeable with the deficit which usually follows his indifferent efforts to run the business committed to him by the court. The lawyer's fee of $7,275, is exceedingly reasonable in view of his competent advice and constant attention to the case which the Court so highly commends.

An equal share in the honor that is reflected in this proceeding upon all those who had a part in it belongs to Judge Evans, who refused to turn the matter over to a receiver but gave the business his personal attention. He has proven that a business can be successfully and economically managed by court officials if the court is willing to take a personal interest in the case and full responsibility for the result. In such cases the costs of administration must be reduced to a minimum and the full time and best efforts of the trustee put forth to make as much as possible out of the assets.

We are glad to learn that this case does not stand alone, especially in the federal courts, where individual judges here and there have awaked to their responsibility in cases of business enterprises committed to their care by selecting proper trustees and receivers and exercising a personal supervision over their work. Such judges are reflecting honor upon the courts and doing much to increase the confidence of the people in the effectiveness of judicial methods of administering business.

NOTES OF IMPORTANT DECISIONS

IS A CARRIER LIABLE FOR ARREST OF PASSENGER ON RAILROAD TRAIN?—We have in mind the possibility of the question propounded as the subject of this note becoming very important in view of state and federal decisions holding that prohibition officers may not search for liquor without a search warrant. The railroad trains are filled with persons carrying liquor, if reports that come to the writer and his own personal observations have not misled him. For this reason the recent case of Clark v. Norfolk & Western R. R., 100 S. E. 480, ought to be interesting.

In this case plaintiff was arrested, while a passenger on defendant's train, by a prohibition officer acting under what is admitted to be a void warrant of a justice of the peace of West Virginia, for not having the required labels on certain packages of whiskey carried by them. Plaintiff recovered a verdict of $500 against the railroad company for failing to protect the passenger from his wrongful expulsion from the train. The trial court set the verdict aside and on appeal, this action of the lower court was affirmed by the Supreme Court of West Virginia, the court saying:

"It is a fact, proven and not disputed, that the conductor and brakemen in charge of the train all knew that the men who forced plaintiff to alight were officers, and in such case the law imposes no duty upon the carrier, or its servants or agents, to inquire into the officer's authority, or substitute their opinions for his, or to protest against his arresting a passenger. A passenger train is not intended as a place of refuge for criminals; and unless a passenger is arrested for an offense of which the carrier's agent knew, or by proper diligence ought to have known, he is not guilty, he is not obliged to interfere or protest against the arrest. The rule, however, is different where the carrier's servants know, or by the exercise of proper diligence ought to know, that the arrest of the passenger is unlawful."

The decision seems to be in accordance with the views of courts and text rulers. (See 10 Corpus Juris 753. In Baldwin v. Seaboard Air Line Co., 128 Ga. 567, 58 S. E. 35, 13 L. R. A. (N. S.) 360, it was held that a passenger on a railroad train who had paid his fare to a given city which was under quarantine regula-

tions and, who, when near the end of his journey, left the train at a station on the railroad line, in obedience to the orders of a quarantine officer, who told him that he would not be allowed to ride on the train into the city, but must leave it at that city, had no cause of action against the railroad company for a wrongful expulsion from its train ,although the conductor pointed him out to the health officer and, after knowledge of such officer's order to the passenger, did not interfere to prevent its execution. But see St. Louis, etc., Ry. Co. v. Roane, 93 Miss. 7, 46 So. 711.

Suppose prohibition officers should enter a train and without warrants, demand the right to search the baggage of passengers for liquor. Would the railroad company be liable for the failure of the conductor to protect the passengers from such illegal search or arrest if liquor were found. If the last clause of the West Virginia decision announces the true principle in these cases, there is no doubt that carrier would be liable.

LAWYERS OF ANCIENT ROME

When we think of ancient Roman lawyers, or those who, centuries before, laid the foundation for the old English classics, those mental giants of the past, who established the fundamentals for Glanville, Brackton, Littleton, Coke, Hale and Blackstone, to build on, most of us have but a confused idea of this epoch of the law, and, while we remember a few of the great names, have but a smattering of the legal portraiture of that period, or may vaguely recall the title of a few of the laws or the names of some of the lawyers; we know little of their relationship to each other or their individual contributions to the great events of their centuries.

To get at the truth about them, however, while they wore their togas and rode in chariots, instead of the modern garb, with automobiles to ride in, we should not examine them, as with a magnifying glass, as assuming colossal statures, because of the distance through the years when they lived, but, with due allowance for the difference in their civilization and modes of life, as mere mortals like ourselves, having substantially the same training, the same appetites, longings, loves, friendships and sorrows.

We know but little of the pleading and practice of the Roman judicial system during the Republic, but, from a study of the law suits which history affords us, Roman lawyers, during the Republic, were as jealous of their Constitution and the principles of established law controlling the governmental agents and protecting the personal and property rights of litigants, as the lawyers of our own period.

The two Magistrates, known as Censors, kept the registers of property upon which all political rights were based, and they were the arbiters of the political and social rights of every freeman.

They exercised the supreme, judicial functions and controlled the morals of the inhabitants of the city and fixed the legal status of each citizen. They could expel a Senator from the Senate or deprive a soldier of his horse and reduce him to the ranks for lack of the requisite property qualification or for notorious, evil living, and they had jurisdiction over all demeaning occupations, slack tillage, extravagance, and other conduct prejudicial to the public weal. An appeal would lie from the Censor's edicts to the Popular Assembly, to which the Censor's charges were publicly stated.

Quaestors, until 366 B. C., were two public accusers, who filed accusations against those committing murder or other infamous crimes, and who saw to it that the sentences were executed.

The Praetors were two colleagues of the Consules, exercising judical functions, one of whom tried causes between Romans called *"Praetor urbanus,"* and the other tried causes between Romans and strangers, or between strangers, and was called *"Praetor peregrinus."*

The two Consules were the Chief Magistrates of the Republic, annually chosen

in the Campus Maritus. In the early days of the Republic, the Consules were chosen alone from the patrician families, but the plebeians later obtained the privilege of obtaining one of the Consules, and, sometimes, both of them were elected from the body of the people.

All other magistrates were subject to the Consules, except the Tribune of the Commons. They assembled the people and the Senate, proposed the laws, and executed their decrees.

The Centumviri, originally 105, but later, 180 in the time of Cicero, were the members of the courts with jurisdiction over wills, inheritances, descents, distributions, executors and administrators, and controversies between debtors and creditors. They usually held court in four separate divisions, but sometimes in only two, and, occasionally, in the more important cases, all sat *en banc*.[1]

The Papirinian Code, or the collection of laws bound into a volume by Sextus Papirinius, are the first Roman laws of which we have any knowledge. This code was followed by the Twelve Tables, of which Cicero makes Crassus say: "A single copy of the Twelve Tables seems to me to be more valuable and of more authority than the libraries of all the philosophers for the purpose of investigating the sources and principles of the law,"[2] and Cicero, himself, places the laws of the Twelve Tables, far above the Greek law, when he says: "The wisdom and prudence of our forefathers surpassed that of other nations, as it is easy to see, by comparing our laws with those of Lycurgus, Draco and Solon. It is incredible how ill-digested and almost ridiculous every system of civil law is except our own. This I repeat every day when, in my discourses, I prefer the wisdom of the Romans to that of other men, and, in particular, of the Greeks."[3]

These tables, along with the interpretations by the College of Priests, the *leges actiones,* and the opinions of those learned in the law, or *responsa prudentium,* with the acts of the Popular Assembly held in the Campus Maritus, the *plebescita,* which, by the *lex Hortensia*[4] were recognized as part of the written Roman law, the *senatus consultum,* the *jus honororium* or the edicts of the Praetors, and the immemorial customs or unwritten law, called *consuetudines,* constituted the body of the Roman laws covering the rights of litigants during the period of the Republic.

These laws were enforced in the Forum, the theater for the display of oratory such as the world has never heard since, and where so many of the great events of Roman history were enacted.[5] Here, extending from the Capitoline Hill to the Palatine, with the sacred way on either side, in early days were two rows of solid pillars, forming the front of the shops which lay behind them, and, at the narrow end of this lane, the *comitium,* or popular assemblies, were held, while, at the wider end, the market place, or Forum, was located, which, in later times, was lined on either side with magnificent basilicae, with splendid halls, used both as courts of law and marts of trade, on the site formerly occupied by the dusty shops, patronized by the people in the early days of the Republic. It was the open space between these pillars and rows of shops that was called the Forum, where speakings and public meetings were held, and proceedings of a judicial nature were disposed of.[6]

The trials were held in the open air. The Praetor, or other presiding magistrate, sat in the center of a raised *dais,* surrounded

(1) Cicero De Or. 1, 38; Quintilian, 4, 1; Heineccius Antiq. Rom. ed. Houbold, 4, 6, 9, p.664.

(2) Cicero De Orat. 1, 44.

(3) Cicero De Orat. 1, 44.

(4) B. C. 286.

(5) See Dr. Arnold's "Description of the Forum"; also Polleti Hitoria Fori Romani Legudium, 1588.

(6) Polleti Historia Fori Romani Legudium, 1588.

by the judges. The counsel and witnesses sat on benches between the judges and the crowd of spectators who congregated to hear the interesting cases tried. The prosecutor, it seems, had the right to select the location of the trial, and Cicero complained that this privilege was abused when he defended Flaccus and Laelius, for the case was tried near the Aurelian stairs, where a mob of Romans gathered and clamored loudly for conviction.[7]

In a criminal case, the Judices were each provided with three tablets. One marked with the letter "A" for *"Absolvo,"* not guilty; another with "C" for *Condemno,"* guilty; and the third with "N. L." for *"Non liquet,"* not proven; and the majority of the letters in the box, or *cista,* determined the verdict.

Of the criminal actions, it seems their law was divided somewhat like our own, for, instead of the misdemeanors, they had the *"actiones populares," instituted* by the Praetor on the complaint of any citizen, and usually resulting in a fine; the *"actiones extraordinare,"* or crimes where the punishment was not fixed or the offense covered by any law, which class of cases was either tried by the Senate, or the *Consules,* or such magistrates as they appointed; and the *"judicia publica,"* or those offenses covered by special laws, such as treason, murder, bribery, or the like.

The relationship of advocate and client, is traced by Niebuhr to the earliest period of Roman history, when the *patroni,* or patrons, represented their *clientes* in all proceedings in the courts of Rome, in return for which the clients were bound to obey, honor and protect the *patronus,* as well as the members of his family, and to ransom him and his family if they were taken by the enemy.[8]

It seems that the Roman lawyers, during the Republic, were divided into two principal classes, the *patroni causarum,* or court lawyers, and the *juris consulti,* or counsellors, who interpreted the laws and publicly and privately advised the citizens concerning their rights.

To this latter class belonged *Scaevola,* the best-read lawyer of Cicero's period, and the preceptor of the latter, who tells us that he met every morning with other young men, who listened to the advice given suitors by Scaevola, and he hardly ever left his side until he had acquired a knowledge of the law.[9]

At seventeen, the Roman law student was usually called to the bar, for he then assumed the garb of manhood, *toga virilis,* and proceeded to the Forum with his parent or guardian and friends and was presented or introduced by some distinguished lawyer, after which he was qualified to practice law.

The Roman judices were more like our jurymen than modern judges, and, in the ancient code of Rome, it seems there were no rules preventing appeals to the passions, prejudice or emotions of the judges, or to prevent the most personal allusions or raillery, all of which were frequently resorted to to carry the cause away from the law or the evidence.

We thus find, according to the Roman legends, that Lucius Junius Brutus brought about the overthrow of the dynasty of the Tarquins, and substituted the consular for the regal government of Rome by snatching the dagger from the bosom of Lucretia, after her outrage by Sextus Tarquinius, and bearing her bleeding body to the Forum where, with his eloquence and the sad spectacle of the degradation of this noble and virtuous dame, he so wrought upon the passions and prejudices of the Romans that they overthrew the tyrant, and vested the governmental powers in the Senate and two *Praetors,* afterwards called *Consules.*[10]

With such an example of patriotism and eloquence, it is little wonder that a descendant of this same Junius Brutus, Marcus Brutus, the father of Caesar's friend,

(7) Quintilian Inst. Or. X, 5.
(8) History Rome, p. 279.
(9) Niebuhr's Lect. 11, 18.
(10) Niebuhr, p. 453.

should have become, as styled by Cicero, "An able lawyer, who wrote on the civil wars."[11]

The noble Cicero was not above resorting to this same practice, for, in the defense of Fonteius, accused by the Gauls of corrupt conduct during his praetorian government, we find his sister, the vestal virgin Fonteia, tearfully clinging to him in court, and Cicero exhorting the judges that "a vestal virgin extends toward you, in suppliant prayer, those hands which she has been used to lift up to the immortal gods in your behalf. Beware of the danger and the sin you may incur by rejecting the entreaty of her, whose prayers, if the gods were to despise Rome, itself would be in ruins."[12]

But, in some other respects, the professional ideals of the bar of ancient Rome were above those of modern times, especially in the practice regarding contingent fees and exorbitant professional charges, for, by the *lex cincia, de donis et muneribus,* lawyers could not legally accept any fee or present from their clients.[13] While intended to protect the people, this law really helped the aristocrats, however, and the prevalency by which clients indirectly expressed their gratitude for legal services while this law existed is evidenced by the many large fortunes accumulated by Roman lawyers and the many substantial fees that history records were paid in given cases.

Lawyers of distinguished family, like Scaevola, Antony, Claudius, or Cornelius, inherited their clientage, but men like Cicero and Hortensius, who were not patrician born, but were educated, rather than born, lawyers, acquired their clients by virtue of their own talent and ability.

While they frequently had as many as four counsel on a side, there was no limit to the number a Roman citizen could retain, and, on the trial of the Consul, Aemilius Scaurus, accused of having accepted a bribe from Jugurtha, he was represented by Claudius Pulcher, Marcellus, Calidius, Messala Niger, Hortensius and Cicero, and he also spoke in his own behalf and materially contributed to his acquittal.

That Cicero understood, as well as modern lawyers, the dangers of a too lengthy cross-examination of an adverse witness, is apparent from his remarks in the defense of Fonteius, where he said: "It is my duty, as counsel, to put a question or two, and that briefly to a witness when examining to any particular fact; and often to abstain from putting any questions at all, lest I should give an adverse witness an opportunity to damage my case, or seem to put leading questions to a willing witness."[14]

We are prone to think of the age of Cicero as the golden age of advocacy in Rome, and so it was, yet, a century and a half before his day, we read of Cornelius Cethegus, Consul in the second Punic war, whom the poet, Ennius, styled: "the flower of all the people and the orator with the silver tongue."[15]

Appius Claudius and his son, Sabininus, were lawyers of the last portion of what Niebuhr terms the mythical age of Roman history. A Sabine, by birth, Appius migrated to Rome with his family and clients, composing a colony of about five thousand. A patrician, he championed the cause of the debtor class and was very able, but much disliked and feared by the plebeians.[16] Sabinius Claudius, it seems, was even more unpopular than his father, but was elected Consul; brought to trial for his violation of tribunalian and agrarian laws, but pleaded his own cause so ably that his accusers were routed.[17]

Cato, the elder, was not only a stern moralist and censor, but also one of Rome's

(11) Cicero, Brut. 62 id. Or. II, 32.
(12) Cicero, Pro Fonteia, 17.
(13) Livy, Hist. XXXIV, 4.
(14) Pro. Fonteia, c, 6.
(15) Cic. Brut. 15.
(16) Livy, II, 16.
(17) Livy, II, 56.

most gifted advocates, and Cicero speaks of Scipio and Laelius as among the most eloquent of the older lawyers.[18] Cato, the elder, was called the Roman Demosthenes.[19] We have all read from Plutarch of his inflexible virtue; how he fearlessly denounced Minicius, the Consul, and prevented his anticipated triumph; of his denunciation of Galba, when eighty years old; of his definition of a king as a "kind of man eater"[20] of his telling a certain tribune that he preferred to "drink what you mix, rather than confirm what you would put up for a law."[21]

Cato's life and activities extended over three ordinary ages of man, and he left to the Commonwealth, in Cato, the younger, one of the noblest of the sons of Rome, and he also left to posterity 150 orations.[22]

Marcus Antonius, the grandfather of Marc Antony, the friend of Caesar, was one of the most able and eloquent of the older lawyers of the Republic. He rose successively through the various public offices to that of Consul, received a public triumph, and fell a victim to the riots incited by Marinus and Cinna. Cicero says the older Antony made Rome the rival of Greece in oratory.[23]

Quintus Muncius Scaevola is said to have been the best read lawyer of the time of Cicero. Like Brutus, he descended from a distinguished ancestor, Carus Muncius Scaevola, a patrician, who, Livy tells us, attempted to kill Parsenna, the protector of the expelled Tarquins, and, when threatened with being burned alive, in defiance of such punishment, bravely thrust his right hand into a flame and held it there until it was consumed, from which the name Scaevola, originally meaning the "left-handed," was derived.

(18) Cic. Brut. 21.
(19) I Plutarch, 248.
(20) Plut. 254.
(21) Plut. 255.
(22) Cic. Brut. c. 17.
(23) Cic. De Orat. I 24; II, 1.

Quintus Muncius was a Roman Tribune, Consul, Pontifex Maximus, and, greater than all these, he was the preceptor of Cicero. He collected together the opinions of previous lawyers, helped to simplify and systematize the Roman Code and is the earliest jurist mentioned in the Pandects.[24]

Lucius Licinius Crassus, a contemporary of the elder Antony, who Cicero, as a boy, remembered, was the most ornamental speaker that, prior to Cicero, ever spoke in the Forum. He was only twenty-seven when his eloquence procured the acquittal of his relation, the vestal, Licinia. He died while Cicero was yet a boy, but Cicero remembered his pure, accurate language and his logical and eloquent arguments while discoursing on the most abstruse questions of law.

When the Consul, Philippius, attempted to ignore the Senate, Crassus delivered a lengthy and eloquent oration, urging the constitutional rights of the Senate, and, while engaged in this oration, he was taken with a severe chill and fever, from which he later, died, and, long afterwards, citizens went to the Senate to view the spot where he stood when stricken in defense of the rights of his order.[25]

One of the interesting will contests which have come down to us, in which Scaevola was pitted against Crassus, is the case of *Componius vs. Curius*, in which Scaevola appeared for the plaintiff, and Crassus for the defendant. The plaintiff was the legal representative and heir-at-law of the testator who, on his deathbed, had named as his heir the supposed child that his wife was expected to give birth to, provided it were a son, but, if the child should die before reaching its majority, then the defendant, M. Curius, was to be his heir. It developed after the death of the testator that his wife was not pregnant. Thereupon, Componius, who was the lawful heir of decedent, instituted proceedings before the

(24) Arnold De Vitis Scaevolarum, ed. Aruzen ,Ultira, 1767.
(25) Dunlap's Rom. Lit. II, 215.

Centumviri to set aside the will and recover the estate, of which Curius had entered into the possession under the will. Scaevola contended for a literal construction of the will, which contained a condition that had not been performed, and which was necessary in order to vest any interest in Curius, viz.: the birth of a son, for whom he was to act as guardian, or, in the event of his death, to succeed to the estate, but, as no son was born, he could not hold under the will. Crassus, with raillery and ridicule, tried to brush aside such technical and legal arguments and he invoked the rule that looks to the intent of the testator as he construed it; and, as the judgment seat then, as well as now, carried with it the right to decide wrong, he won his case and defeated the perfectly legal claims of Scaevola's client.[26]

Marcus Licinius Crassus, the grandson of Lucius Crassus, was a contemporary of Pompey, Caesar and Cicero. He was regarded as the wealthiest man in Rome; was not so eloquent as his grandfather, but he defended the people so generously that he became quite popular, and often, when Pompey, Caesar or Cicero would refuse to defend an accused citizen, he would arise and advocate his cause. His banquets and entertainments were conducted on a lavish scale, and Cicero and his friends, Lucullus, Hortensius, Atticus and other congenial spirits, often made merry at his festal board. Of all the contemporaries of Cicero, however, he says none kindled in him more emulation, when he was a young man, than Lucius Aurelius Cotta and Hortensius.

Cotta's eloquence, he described as calm and flowing with an elegant and correct diction. Cotta was elevated both to the Consulship and Censorship, and, in the debate respecting Cicero's recall, when called upon by the Senate for his opinion, he censured the proceeding in no uncertain terms.[27]

(26) Forsyth's History of Lawyers, 97-98.
(27) Cic. Ac. Div. II, 21. El. ad Att. 12, 23.

Quintus Hortensius was eight years older than Cicero. He was of a plebeian family, but, at the early age of nineteen, had distinguished himself in the Forum. He served first as a soldier and afterwards as military tribune aedile and consul. Cicero who loved him like a brother, says of him:

"Nature had given him so happy a memory that he never had need of committing to writing any discourse which he had meditated, while, after his opponent had finished speaking, he could recall, word by word, not only what the other had said, but also the authorities which had been cited against him. He never let a day pass without speaking in the Forum. He excelled particularly in the art of dividing his subject and in then re-uniting it in a luminous manner, calling in, at the same time, even some of the arguments that had been used against him. His diction was noble, elegant and rich; his voice strong and pleasing; his gestures, carefully studied."[28]

He gave the most careful attention to the elegance of his attire and the gracefulness of his figure and his attitudes. He is said to have so arranged his toga that the folds did not fall about his person by chance, but they were formed with great care by help of a knot carefully tied and concealed; and Macrobius records the story that he once filed an action for damages against one of his opponents, clients who roughly jostled him while en route to the Forum, with his coterie of clients and friends, because his toga was ruffled and disarranged.[29]

For thirteen years, he was the acknowledged head of the Roman Bar, and he soon amassed a large fortune. His house at Rome was elegantly furnished, and he also had villas at Tusculum, Bauli and Laurentum, where he had wild beasts which would come to feed, at the sound of a horn, for the edification of his guests and banqueters.[30] When we reflect that all this es-

(28) Cic. Brut. c. 80.
(29) Macrobius, Sat. 3, 13.
(30) Dunlap, History Rom. Lit. Vol. II, 222.

tate was amassed by a plebeian lawyer at a time when the law of Rome prevented an advocate from charging a client for his services, we can hardly conceive what Hortensius might have accumulated if a lawyer had been allowed to make charges to his clients.

It is reported that, a few months before his death, he defended his nephew, Messala, who was charged with illegal canvassing, and secured his acquittal, more because of the brilliant defense of his advocate than the lack of evidence of his guilt.[31]

That the Roman lawyers maintained the time-honored spirit of "professional courtesy" and removed from their personal relations all the acrimony and personal conflicts of their clients is evidenced by the oft-quoted, but beautiful and touching, tribute which Cicero paid to the memory of Hortensius after his death:

"When I received the news of the death of Hortensius, it was obvious to all how deeply I was afflicted. * * * My sorrow was increased by the reflection that, at a time when so few wise and good citizens were left, we had to mourn the loss of the authority and good sense of so distinguished a man, who had been intimately associated with me through life, and who died at a period when the State most needed him; and I grieve because there was taken from me, not, as many thought, a rival, who stood in the way of my reputation, but a partner and companion in a glorious calling; for, if we are told that, in a lighter species of art, noble-minded poets have mourned for the death of poets, who were their contemporaries, with what feelings ought I to have borne his loss with whom it was more honorable to contend than to be without a competitor at all, especially as his career was never embarrassed by me nor mine by him, but, on the contrary, each was assisted by the other, with mutual help, advice and encouragement."[32]

(31) Cic. Ep. ad Fam. 8, 2.
(32) Cic. de Claris Oratoribus.

Marcus Tullius Cicero was, by far, the greatest legal luminary of the Republic, and the magnitude of his labors as orator, advocate, consul, author, teacher, philosopher and commentator, was so prodigious that he stands without a rival, and, in spite of his vacillations and conceits, even after two thousand years, the profession must bow in awe and reverence to this great name, which heads the list of Roman lawyers, the most eloquent of the sons of Romulus!

His first important case was the defense of Roscius Americus, accused of parricide. His prosecution of Verres, who was defended by Hortensius and the Metelli, resulted in the exile of Verres. He signified his consulship by crushing the conspiracy of Cataline, and was then hailed as "The Father and Deliverer of his Country." Claudius finally accomplished his exile. He was welcomed home by the Senate at the city gates but Milo finally killed Claudius, and Cicero unsuccessfully defended him for his murder.[33] Long and vain struggles for the Republic with both Pompey and Caesar; of his phillipics against Antony; his divorce of his imperious and violent-tempered wife, Torrentia, at sixty-two, and his marriage to his ward, Publilia; his distraction over the death of his beloved daughter, Tullia; his disappointment over his wayward son; and the loyalty of his freedman, Tiro, who became his amanuensis and his editor are familiar to all students of Roman history.

Who of his period could reproduce for us the life and events of Rome like Cicero? Does he not actually introduce you to the trader, Cheria, "with his eyebrows shaved, and that head which smells of tricks, and in which malignity breathes"?[34] Can you not see the praetor, Verres, taking an airing in a litter, with eight slaves, like a king of Bithynia, softly lying on Malta roses?[35] Or Vatinius, suddenly starting

(33) Cic. Vid. Milo.
(34) Pro. Ros. Com. 7.
(35) In Vatin. 2.

forth, "with eyes glaring, his neck swollen, his muscles streched"?[36] Do you not almost feel that you have brushed against the Gallic witnesses who walk about the Forum with an air of triumph and head erect![37] Or the Greek witnesses, who chatter without ceasing and gesticulate with their shoulders?[38] Clearly his powerful mind embalmed them in history for all time.

Cicero preferred to defend rather than to prosecute, "as more in accordance with the promptings of his nature and his usual feelings," as he explains in the defense of Muraena,[39] and, in his twenty-four orations now extant, he appeared as prosecutor in only three, not including his orations against Cataline and Antony, which were delivered as a statesman in the Senate, and not as an advocate.[40]

After so fondly craving for his dear Rome, a Republic based on liberty and law, "with a supreme and royal power, another part reserved for the authority of the chief citizen, and certain things left to the judgment and will of the people"[41] what a disappointment he must have felt to actually have to contemplate the rivalry of the conspirator, Cataline; to find himself the victim of the cruel and dissolute Claudius, and, instead of a free, proud Roman, to become the vassal subject of a Caesar!

While all of Cicero's orations in defense of his clients or for the prosecution are most interesting and instructive, his defense of Licinius Muraena, who defeated Servius Sulpicius, after a severe contest, for the Consulship, and was then accused of bribery and corruption to carry his election, is perhaps the most adroit. Muraena was a soldier, while Sulpicius was a lawyer. Sulpicius was assisted in the prosecution by Marcus Cato, Postumius, and a son of Sulpicius; while Crassus, Hortensius and Cicero appeared for the defense. Cicero had supported Sulpicius in the election, and he complained that he violated their ancient friendship in appearing for Muraena. Hortensius and Crassus preceded Cicero in the argument for the defense, but their orations have not been preserved. Cato accused Cicero of bad faith in having, as Consul, helped to secure the law against corrupt practices and elections, and then appearing to defeat such a law. Cicero compared himself to a mariner, who had returned from a perilous voyage, and should point out, to one about to sail, the rocks and shoals to be avoided, and "What," he asks, "is more natural than that a Consul should be defended by a Consul?" He admitted that he would assume an inconsistent position, after having procured a law against bribery, if he afterwards denied that bribery were an offense under such law, but that was a far different thing than to merely deny that his client had committed acts forbidden by the law. He denied the principle that a lawyer can not defend even his enemy against the false accusation of his friend, for, if this were true, it would apply equally to Crassus, Hortensius and others, and, hence, a consul-elect would be denied counsel, although the wisdom of their ancestors had provided that the lowest citizen should not be denied an advocate.

Sulpicius was a patrician, and Muraena was of the plebeian order. Cato had called him a "dancer" and Sulpicius had said he came from an "upstart family." Cicero tells Cato that a man of his authority "ought not to pick up nicknames in the street or use the scurrilous language of buffoons;" and advises Sulpicius that his lineage, though noble, is known only to bookworms, while his father was only a knight, and his grandfather had no particular eminence. "I little thought," he said, "that, when a consul-elect, born of an old and distingushed race, was defended by the son of a mere Roman knight, himself

(36) In Verrem, Act. Sec. VI, 11.
(37) Pro Font. 11.
(38) Pro Rosc. post. 13.
(39) Pro Muraena, 3.
(40) De Offic. II, 14.
(41) De Rep. I, 45.

a consul, his accusers would venture to speak of 'upstart families'." He contrasts the services of Sulpicius, as a consulting or chamber lawyer, to the distinguished military service of Muraena, as the Lieutenant of Lucullus, in Asia Minor.

Cato had complained of many dinners, and because crowds had followed Muraena on the streets, and Cicero asks him: "Prove that they were bribed to do it, and I admit that it was an offense. Without this, what have you to find fault with? Do you ask me what need there is for that which has always been a custom among us? The lower classes have only this one opportunity in our election contests for showing gratitude or conferring obligations; do not, therefore, Cato, deprive them of the power to do this service."

Muraena was acquitted.

Cicero's defense of Cluentius, accused of murder of his stepfather by poison, was one of his most elaborate and successful efforts, and his admonition regarding the duty of a trial jury in a criminal case is like the charge of a modern court; he says:

"I can not doubt, gentlemen, that, if you were to sit on the trial of a man who was beyond the reach of the statute under which he was indicted, although his character might be odious, and himself personally obnoxious to you, and you might feel very reluctant to pronounce a verdict of acquittal, you would, notwithstanding, acquit him, and respect your oath, rather than gratify your dislike, for it is the duty of every intelligent juryman to consider that the functions with which he is invested by the State are limited to the extent of his commission, and he must remember that, not merely power has been delegated to him, but trust reposed in him. It may be his duty to acquit one whom he detests, or to convict another against whom he has no feeling of enmity. He ought ever to consider, not his own wishes, but the obliga- He should carefully attend to the particular tion which the law and his oath imposes. statute on which the indictment is framed, the kind of person accused, and the nature of the offense charged, and, in addition to all this, a wise and honest citizen, when he enters the jury box, ought to remember that he does not sit there alone and may not act simply as he believes, but that he takes with him, as his assessor, the law, itself, and the restraints of religion, equity and honor, and must put away passion, envy, fear and all private likings and dislikings."[42]

Another interesting case that Cicero defended was that for the talented soldier-lawyer, Caelius, who studied under Cicero and developed into quite an erratic, though eloquent, orator, as well as a kind of Roman Don Juan and Beau Brummel. He was accused by the patrician courtezan, Clodia, the sister of the dashing and reckless libertine, Claudius, widow of Metellus Celer, and also a descendant of the noble Appius Claudius, of an attempt to poison her. Because of the high standing of the parties involved, all Rome was, no doubt, set agog with this case, and it became "the talk of the town."

After his election as *quaestor,* Caelius quit his father's home and rented a fashionable house from the former Tribune, Appius Claudius, on the Palatine, and it was here that he met the charming Clodia. Clodia, at this time, was a young widow and an educated, attractive and popular female, with many admirers. It is said she wrote verses and danced better than it was thought a proper or an honest woman could do.[43] She had many male friends, and not a few lovers, and, feeling that her patrician blood would excuse all excesses, continuously shocked the more exacting citizens of Rome by her defiance of custom and the rules of decorum, for which this ancient, classic city was renowned.

Caelius also danced well, was of good physique and handsome appearance; spent his money lavishly, and dressed with such taste that the beauty and breadth of the purple band that bordered his toga made of him at once a strking and attractive person. The poet, Caius Valerius Catullus, was also a lover of Clodia and a rival of

(42) Pro Cluentius.

(43) Schol. Bob. p. Sext. Ed. Or. p. 304; Schwab, Quaest. Catull, p. 77.

Caelius,[44] and his poem to Lesbia is said to have been addressed to Clodia, whom he compared to the Lesbian Sappho.

Caelius tired of Clodia before she was willing for him to leave her side, and all her love and passion, from the day that she realized she was a woman scorned, turned to hatred and she determined to destroy Caelius. On advising with his enemies, she concluded to accuse him of several crimes, and, among them, of an attempt to poison her.

Caelius was defended by his friends, the wealthy Crassus and Cicero. Cicero commenced his argument by observing that he was "not the enemy of women, and, still less, of a woman who was the friend of all men," but he proceeded to portray Clodia in her true colors, as the degenerate descendant of the noble Appius Claudius. He promised that Caelius would mend his ways, and he was acquitted, but, from the racy and gossipy letters which Caelius wrote Cicero after his departure to the camp of Pompey, it may be doubted whether he really reformed or not. At thirty-four, he was killed by soldiers of Caesar at Thurium, and the sage, Quintilian observes of him: "He was a man who deserved to have had a juster sense of conduct and a longer life."[45]

That the lawyers of ancient Rome adhered truly to the time-honored rule requiring adversaries at law to "strive mightily but eat and drink as friends,"[46] is abundantly sustained in the chronicles of "Cicero and His Friends."[47]

It is most interesting to study the friendly relations existing between the great lawyers of the time of Caesar and Cicero and to follow up the influences that led to the conspiracy which ended in the death of Caesar; of the noble part played by Cato the younger, and the noble Marcus Brutus, of whom Caesar said: "All that he wills, he means."[48] Brutus believed that "no slavery is advantageous enough to make one abandon the resolution to be free,"[49] and that it was "better to command no one than to be a slave."[50]

While, according to the judgment of society, Brutus was guilty of murder and treason, we can but agree with Shakespeare that he was the most altruistic, idealistic criminal of antiquity, for he regarded Caesar as a usurper, and reasoned himself into believing that he had a right to kill him for the general good of Rome.

All of the leading lawyers of that fighting age were soldiers, and many of the soldiers were lawyers.

Cicero, in the defense of Ligarius, before Caesar, refers to the fact that "I have pleaded many causes, Caesar, and some even with you as my coadjutor, while you paved the way to your future honors by practice in the Forum."[51] Tacitus also observes that "Caesar, the Dictator, was on a par with the greatest orators."[52]

While none of Caesar's orations have preserved, his contemporaries mention three speeches he made against Dolabella, who was accused of pecuniary corruption, and who was successfully defended by Cotta and Hortensius, and three against Domitius and Memmius. He also represented some of the Roman dependencies, and appeared for Greece on one occasion, when he was said to have spoken with remarkable eloquence and propriety of expression.[53]

It is as true now as in the days of Lord Coke that "out of the old fields cometh the new corn." Like ourselves, these ancient lawyers of Rome were but shadows, moving swiftly in the sun, and yet such men as Cicero, Cato and Brutus gave to those shadows a certain reality of setting the example of associating with the law and letters an eloquence and nobility and upright-

(44) Ovid Trist, II, 427; Apul. de. Mag. 10.
(45) Inst. Orat. X, 1.
(46) Shakespeare's "Taming of the Shrew," Act I, Scene 2.
(47) Plutarch's "Life of Lucullus"; Boissier's "Cicero and His Frieinds."
(48) Ad Att. XIV. 1.
(49) Epis. Brut. I, 17.
(50) Quint. IX, 3.
(51) Pro Ligerius.
(52) Ann. XIII, 3.
(53) Forsyth's "History of Lawyers," 167.

ness of purpose, which has made through the centuries for the straightforwardness, purity and elevation of humanity.

From the point of view of the solar system, the greatest incidents of their lives were no more than the little happenings of the ants that hurry to and fro upon their little hills, and yet, to the family of the ants, their happenings are all important.

The memory of these men should remain forever bound in an aroma in the minds and hearts of the lawyers of successive ages.

For five hundred years following the overthrow of the Republic of Rome, aside from Aemilius Papinianus, or until the age of Justinian, Trebonius and a few lawyers of distinction of that epoch, there appeared but a few great lawyers in Rome. On this subject, we have the credible evidence of Tacitus, who, a little more than a century after the death of Cicero, wrote:

"Often, you have asked me, Justus Fabius, why, when former ages were so distinguished by the genius and renown of orators, our own age, destitute and bereft of glory, scarce retains the very name, for we style none such now, except the ancients; but the speakers of the present day are called pleaders, advocates and barristers, and anything rather than orators."[54]

Our time resembles that in which the lawyers of the Roman Republic lived. The lawyers of that time knew, even as we know, that contempt for the Constitution and the traditions of the fathers, with the growing discontent for the present, will inevitably bring to a precipitous end the tranquil enjoyment of personal and property rights, guaranteed by established law. We see ourselves in them, and this is what attracts us to them, and this is why we should be benefitted from a short visit with these Roman lawyers who, in spite of the centuries, seem to be almost of our own generation.

EDWARD J. WHITE.

St. Louis, Mo.

(54) Tacitus de Causis Sorruptae Eloquentiae.

INSURANCE — AUTOMOBILE COLLISION.

UNIVERSAL SERVICE CO. v. AMERICAN INS. CO.

181 N. W. 1007

Supreme Court of Michigan. March 30, 1921.

The striking of an autotruck by the falling onto it from above of the scoop of a steam shovel with which the truck was being loaded is a "collision" within a policy insuring the truck.

FELLOWS, J. Plaintiff corporation was in the business of selling trucks on installment contracts. It entered into a contract of insurance with defendant insurance company, insuring it, among other things, from loss and damage occasioned by collision. Collision insurance, as we understand the record and briefs, is usually accomplished by attaching a rider to the policy. The record does not contain a copy of the rider, so we have not its specific language before us, the case having been submitted on an agreed statement of facts, from which it appears that there was "full coverage collision" insurance. Plaintiff corporation had sold to plaintiff partnership a truck on installment, and had an insurable interest in it. The accident and the question presented is thus fairly stated by defendant's counsel in their brief:

"The truck was loaded by means of a steam shovel; that is, by a scoop connected with and swinging from the arm of a derrick. The scoop was filled with crushed stone, lifted by the derrick arm, swung over the truck, lowered to the proper position, and open to allow the stone to fall into the truck body. At the time of the accident, the loaded scoop, while over and above the truck, fell from some unexplained reason upon the truck, causing damage to the truck in the agreed sum of $483.45.

"The intent of the parties, in entering into this stipulation of facts, was to submit to the court the question of law whether the accident above described was a 'collision' within the meaning of the insurable contract, and within the contemplation and intent of the parties when said contract was made, and such question is the only question before this court."

We, therefore, address ourselves directly to the one question here involved: Does the fact that the truck was struck by an object coming from above it, instead of on a level with it, remove the accident from the field of "collision," and relieve the defendant from liability? Until the advent of the automobile insurance against collision was practically, if not wholly, confined to maritime insurance. Many authorities will be found in this field of the law determining when vessels are "in colli-

sion," and the holdings are far from uniform. Two extreme ones will be noted: The Moxey, 17 Fed. Cas. 940, and Wright v. Brown, 4 Ind. 95, 58 Am. Dec. 622. In the first of these cases the injury had been done to the vessel at its mooring by being violently rubbed against by another craft. In disposing of it Judge Betts said:

"I do not think the term 'collision,' as used in the maritime law, is to be construed with the absolute strictness contended for by the claimant's counsel. An injury received by a vessel from being violently rubbed by another, or pressed by her with force against a pier or wharf, as in this case, may, I am inclined to think, be recovered for in admiralty under the general charge of collision, as well as where the injury is derived directly from the headway of a vessel under navigation, or drifted against her."

In the second of these cases a flat boat was sunk at its wharf by violent waves produced by the steamboat Wisconsin, owned by the defendants. The court treated it as a case of collision, saying:

"We shall consider this case as one of collision between the vessels; for it must be the same thing in principle, whether the steamboat ran upon the flat boat, or forced some other object upon it, to produce the injury."

These are undoubtedly extreme cases. The language of the court in London Assurance v. Campanhia De Moagens, 167 U. S. 149, 17 Sup. Ct. 785, 42 L. Ed. 113, seems more in consonance with the generally accepted understanding of the term. It was there said:

"As to the first, we think that the vessel was 'in collision' within the meaning of the language used in the certificate which represented and took the place of the policy. It was not necessary that the vessel should itself be in motion at the time of the collision. If while anchored in the harbor a vessel is run into by another vessel, it would certainly be said that the two vessels had been in collision, although one was at anchor and the other was in motion. We see no distinction, so far as this question is concerned, between a vessel at anchor and one at the wharf fully loaded and in entire readiness to proceed upon her voyage, with steam up and simply awaiting the regulation of some insignificant matter about the machinery before moving out. If, while so stationary (at anchor or at wharf), the vessel is run into by another, we should certainly, in the ordinary use of language, say that she had been in collision. * * *

"It is impossible, as we think, to give a certain and definite meaning to the words 'in collision,' or to so limit their meaning as to plainly describe in advance that which shall and that which shall not amount to a collision, within the meaning of this policy."

And the general tendency of the decisions involving maritime insurance is that a vessel is "in collision" when it is struck by another, although one may not be under motion. With some slight modifications the word "collision" is given by the courts in maritime insurance cases the meaning given it by the lexicographers.

Cases involving automobile insurance, however, are not wanting. Defendant's chief reliance is upon O'Leary v. St. Paul Fire & Marine Ins. Co. (Tex. Civ. App.) 196 S. W. 575, and Wettengel v. United States "Lloyds," 157 Wis. 433, 147 N. W. 360, Ann. Cas. 1915A, 626. In the Texas case the automobile was injured, while standing in a garage, by the falling of the second floor. It was held that the insurance company was not liable upon a policy insuring against damage and loss by collision. In the Wisconsin case, the language of the policy was "by being in collision * * * with any other automobile vehicle or object." That court, adopting the doctrine ejusdem generis, held that there was no liability where the automobile run down a bank three or four feet into the river. The Missouri court, however, where a similar provision in a policy was before it, declined to adopt the doctrine ejusdem generis, and sustained a liability. Rouse v. St. Paul Fire & Marine Ins. Co. (Mo. App.) 219 S. W. 688.

Plaintiffs' chief reliance is upon the case of Harris v. Am. Casualty Co. of Reading, 83 N. J. Law, 641, 85 Atl. 194, 44 L. R. A. (N. S.) 70, Ann. Cas. 1914B, 846. In this case the automobile crashed through the guard rails of a bridge and was precipitated into the stream below. The defense there, as here, was that there had been no collision. This defense was overruled by the court. After considering the definitions found in the dictionaries and what was said in London Assurance v. Campanhia De Moagens, supra, and speaking of the plaintiff, the court said:

"Therefore he is entitled to damages (stipulated as to amount), unless within the meaning of the policy the moving or stationary object must be perpendicular instead of horizontal. There are no words in the policy which limit the meaning of the object to a perpendicular one.

"Suppose a person driving an automobile along a road comes to a place where a highway bridge over a chasm had fallen away, and the machine be precipitated to the ground below, can it be said that there could be no recovery under such a policy as is here sued on because the damage to the machine was caused by collision with the flat earth instead of some upright or perpendicular object on the earth? We think not. To hold that there could be no recovery under such circumstances would be to misconstrue terms of a contract concerning which there is no room for construction, because the meaning is perfectly plain."

In Wetherill v. Williamsburgh City Fire Ins. Co., 60 Pa. Super. Ct. 37, the automobile was injured by backing into an open elevator shaft, thus precipitating it to the floor below. It was held that this was a collision within the meaning of a policy of insurance similar to the one here involved. Lepman v. Employers' Laibility Assurance Co., 170 Ill. App. 379, is in consonance with Rouse v. St. Paul Fire & Marine Ins. Co., supra, and opposed to Wettengel v. United States "Lloyds," supra. What is said by the court in Hardenburgh v. Employers' Liability Assurance Co., 78 Misc. Rep. 105, 138 N. Y. Supp. 662, as to what constitutes a collision sustains the plaintiff. The case was later reversed (see 80 Misc. Rep. 522, 141 N. Y. Supp. 502), but upon the ground that the testimony as to the cause of the accident did not take the case out of the domain of conjecture and speculation. While not directly in point, Stix p. Travelers' Indemnity Co., 175 Mo. App. 171, 157 S. W. 870, and Hanvey v. Ga. Life Ins. Co., 141 Ga. 389, 81 S. E. 206, tend to sustain plaintiffs' contention.

In Ruling Case Law (14 R. C. L. 1273), under the head of Automobile Insurance, will be found the following:

"A provision in an automobile policy for indemnity against 'collision' covers striking against a stationary object, and according to some courts water and land are 'objects,' and an automobile which runs into either or both collides with an object or objects, though the objects are horizontal rather than perpendicular, but other courts have limited a provision as to collisions with any vehicle or other object to like objects, so as to preclude a recovery for injury caused by running off a bank. A provision in such a policy that damages resulting from collision due wholly or in part to upsets shall be excluded does not operate to defeat recovery where an automobile runs off a bridge, is precipitated into the water below, and lands at the bottom of the stream upside down, the collision not being due to the upset; the upset being rather the result of the collision."

Most collisions occur in the violent impact of two bodies on the same plane or level, and it is undoubtedly true that the word is more frequently used to express such impacts than other violent impacts. But we doubt that this fact has given to the word such a common understanding of its meaning as to exclude violent impacts unless upon the same plane or level. If one machine was going up and another going down a steep hill, and they came violently together, no one would hesitate for a moment in using the word "collision." At what angle must the impact occur to make the use of the word "collision" inappropriate and relieve the insurance company from liability? We are persuaded that the better rule, the safe rule, is to treat and consider the word as having the meaning given it uniformly by the lexicographers; that where there is a striking together, a violent contact or meeting of two bodies, there is a collision between them, and that the angle from which the impact occurs is unimportant. In the instant case there was the violent striking together of the truck and the heavily ladened scoop; this was a collision within the meaning of the policy and rendered the defendant liable.

Since coming to the conclusion here arrived at, and since the preparation of the foregoing opinion, the Supreme Court of Wisconsin has handed down an opinion in Bell v. American Insurance Co., 181 N. W. 733, in which that court has reached a contrary conclusion than the one we have arrived at. Notwithstanding our high regard for the opinions of that court we are constrained to adhere to our original conclusion.

The judgment is affirmed.

NOTE—*Meaning of "Collision" in Automobile Insurance.*—In addition to the quite full consideration of this subject by the Court in the reported case, we quote as follows from Berry, Automobiles (3rd ed.), sec. 1722:

"The word 'collision,' as used in a policy insuring against loss or damage to an automobile resulting solely from collision with any object, means the act of colliding; a striking together; violent contact.

"The word 'object' means 'anything which comes within the cognizance or scrutiny of the senses, especially anything tangible or visible. Anything, whether concrete or abstract, real or imaginary, that may be perceived or apprehended by the mind; that of which the understanding has knowledge.' As used in such a policy of insurance it includes water and land. 'They are not abstract or imaginary, but tangible, visible, concrete, and real, an dmay be perceived and apprehended by the mind; the understanding has knowledge of them.' As so used it includes both perpendicular and horizontal objects, including the flat earth.

"The word 'collision,' as used in such a policy, is not confined to cases where both the colliding objects are in motion. 'Collision with' means striking against.

"It has been held that the driving of an automobile into a hole six or seven inches deep and eighteen inches wide between car tracks in a city street, is not such a 'collision with an object' as in contemplated by the parties to an insurance policy containing a collision clause.

"Where an automobile was being driven on a road the sides of which sloped from the edges of the roadbed at an angle of 30 to 45 degrees into a deep ditch, and at a turn in the road the machine turned out on the side of the ditch, the rear wheels skidded and threw the rear of the machine farther into the ditch than the front wheels, and in attempting to regain the road the right front wheel collapsed, it was held that

there was nothing to indicate that the damage was caused by collision with any object, and that no recovery could be had."

BOOK REVIEW.

KALES' ESTATES AND FUTURE INTERESTS.

This new work by Mr. Albert M. Kales of Chicago, although concerning primarily the law of Illinois, and discussing in detail the decisions of that state, nevertheless contributes much to the law of future interests in real property. Mr. Kales has devoted much time to the study of real property, particularly to the law of future estates. For twelve years he has been a lecturer on the subject at the Northwestern University and also at Harvard University. He has contributed many articles on this subject to law periodicals and has cleared up many dark places in the law of future estates. It is somewhat surprising that Mr. Kales, whose knowledge of the subject of future estates is so broad that he could have produced a text book covering the decisions of the entire country, should have confined himself to the decisions in Illinois. It is interesting to note his reason, and we quote, as follows:

"During the twelve years from 1905 to 1917 the writer spent at least one-third of his time in teaching at Northwestern University and other law schools. He finally had the privilege of teaching at the Harvard Law School in the year 1916-1917. That entire experience, taken with his experience in practice, has only confirmed the belief that so long as our states administer justice as they now do, some law schools in some jurisdiction must soon begin to teach the local law. In the larger and older states the law teachers must do again what Langdell and his associates did. They must re-write and re-state the law for law students. Only this time the work must be done with reference to the decisions and statutes of two jurisdictions, the single state and the United States. This is a task which needs (and as yet has not secured) the same genius and industry that Langdell and his associates exhibited when they undertook to re-state and re-analyze the great subjects of the common law. No teacher of today need think his talents superior to the task of today."

We believe that Mr. Kales has here stated a truth which applies not only to text books for students but also to future text books for practitioners. The general text book is becoming more and more useless to lawyers. The jurisprudence of each state can be stated from its own decisions, and it can not be stated accurately otherwise The states of Pennsylvania, of Massachusetts, of New York, of Illinois, of Ohio and other commonwealths with a long history and a large population, should have the law of their jurisdictions stated with reference to the English common law and the law of the United States, but without other than a casual reference to the law of any other state or country. If this were done our text books would be more accurate, and distinctions between local decisions could be made that would throw much light upon the exact state of the law locally. This is made especially clear by Mr. Kales' work in his discussion of Illinois decisions with reference to the common law principles and feudal customs. The Illinois lawyers are to be congratulated upon having at their command such a splendid review and criticism of decisions in their own state on the subject of future estates. The work will no doubt prove to be of great value to the courts and will serve greatly to improve and clarify the law in that state on the subject of future interests.

Bound in law buckram, and printed in one volume of 948 pages.

HUMOR OF THE LAW.

Toinette: "Are policemen fraternal fellows?" Tony: "Positively. They are all club men!"—*Rutgers.*

"What's the excitement?"

"A man is paying a fool election bet by standing on his head in the middle of the street."

"Umph!"

"I wouldn't censure him too severely. This may be the first time in years that he's had any occasion to use his head."—*Birmingham Age-Herald.*

The difficulty seems to be in getting far enough from ourselves to see ourselves as others see us. This was humorously illustrated by a dear old Salvation Army man who was under arrest, charged with disturbing the peace by his loud shouts upon the street. "John," said the prosecuting attorney, "how far away could you be heard?"

The eyes of the grizzled old Salvationist twinkled humorously as he replied, "I could never get far enough away from myself to find out."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Bailment**—Destruction of Cotton.—In an action by an owner of cotton against the operator of a cotton gin for damages for the destruction of cotton bales by fire after ginning and while on a railroad platform, erected for the convenience of the owners of cotton to facilitate shipment, failure of the ginner to maintain a watchman over the cotton while on the platform held not negligence.—Scott v. Sample, La., 87 So. 478.

2. **Bankruptcy**—Preference.—The taking of security by a creditor, when it was known to both that the debtor was then insolvent in the sense of the Bankruptcy Act (Comp. St. §§ 9585-9656), but in the honest belief and with a reasonable prospect that some of his assets, worthless for the moment, would, if he were allowed to continue his business, realize enough to pay his debts in full, held not the giving or taking of a preference, voidable under Bankruptcy Act, § 60 (Comp. St. § 9644); the creditor not having reasonable cause to believe that the transfer would effect a preference.—Kennard v. Behrer, U. S. D. C., 270 Fed. 661.

3.——Priority for Wages.—One who had a contract with the bankrupt to manage the bankrupt's drug business for a stated weekly compensation, and who was not shown to have performed any services other than managing the business, is not entitled to priority for his claim for services under Bankruptcy Act, § 64b, subd. 4 (Comp. St. § 9648), giving priority to wages of workmen, clerks, salesmen, or servants.—In re Bonk, U. S. D. C., 270 Fed. 657.

4. **Banks and Banking**—Interest on Certificate of Deposit.—Where a certificate of deposit for six-month period expressly provided that interest should not be payable after maturity, interest could not be recovered after expiration of such six-month period.—Verdi v. Helper State Bank, Utah, 196 Pac. 225.

5. **Benefit Societies**—Void Constitution.—Constitution of benefit society that no officer or agent might alter, modify, or waive provisions held void.—Fraternal Aid Union v. Whitehead, Miss., 87 So. 453.

6. **Bills and Notes**—Renewal by Married Woman.—Renewal by married woman of note for money for son and for medical attendance after transfer to innocent holder regarded as for her own benefit.—Overland Nat. Bank v. Halveston, Idaho, 196 Pac. 217.

7. **Carriers of Passengers**—Degree of Care.—If, while the street car company's invitation to board its car was still open, plaintiff accepted it and was in the act of entering, having hold of the handrails with one foot on the ste and the other entering the door, plaintiff was entitled to a reasonable time to enter, and the car operatives must see that no one is in the act of boarding the car when they start or shut the door, and they must use the high degree of care owed a passenger in ascertaining this fact, and the liability of the company was not restricted to a case of actual knowledge of the operatives that plaintiff was boarding the car.—Vogts v. Kansas City Rys. Co., Mo., 228 S. W. 526.

8.——Entering Sleeping Car.—A passenger in an ordinary coach, who entered a lavatory in a sleeping car with the conductor's consent solely for the purpose of using the lavatory, did not become thereby a passenger of the sleeping car company, since she was not seeking tranportation in the sleeping car.—Payne v. Shearer, U. S. C. C. A., 270 Fed. 572.

9. **Commerce**—Assumed Business Name.—The state cannot restrict interstate commerce by prohibiting a person from contracting for the shipment to him from outside of the state of a lawful subject of interstate commerce until after he shall have complied with Burns' Ann. St. 1914, §§ 9711a-9711c, requiring the filing of a certificate of an assumed business name.—Humphry v. City Nat. Bank, Ind., 130 N. E. 273.

10.——Interstate.—Where a non-resident corporation, through its agent, took orders for portraits to be enlarged at stated prices and to be delivered in frames, which the customer might purchase at a reasonable price, fixed by the portrait company, or might refuse to purchase, the purchase of the frames was a part of the transaction, and a city ordinance requiring a license for the transaction of such business was invalid, as imposing a burden on interstate commerce.—Chicago Portrait Co. v. City of Bellingham, U. S. D. C., 270 Fed. 584.

11. **Constitutional Law** — Due Process. — A hearing before the Third Assistant Postmaster General on the question of revoking a newspaper's second-class mail privilege of which the publisher had due notice, and at which it was represented by its president and was fully heard, satisfied the requirement of due process of law when fairly conducted.—United States v. Burleson, U. S. S. C., 41 Sup. Ct. 352.

12. **Contracts** — Public Policy. — Water company's agreement to supply water to certain land at specified rate, where the rates for the use of such water had not been fixed by public authority, held not against public policy.—Mer-

chants' Nat. Bank v. Carmichael, Cal., 196 Pac. 76.

13. **Corporations** — Duration of Contract.—Where as a result of corporate difficulty which was followed by a voting trust arrangement defendant acquired the stock of a corporation under an agreement that he should pay the sellers, the shareholders, an annual sum of money before payment of any dividends, and no term of duration was fixed, the contract will continue during the life of the corporation.—Rossmassler v. Spielberger, Pa., 112 Atl. 877.

14.——False Representations.—Proof that individual defendants, in incorporating a business which they took over from its former owners, obtained their shares of stock without paying therefor, or that they took over the business at an excessive valuation, would subject them to liability to creditors or perhaps to other liabilities, but would not support a suit by one subsequently purchasing stock to rescind on the ground of specific false and fraudulent representations concerning the company's condition.—Tapper v. Washington Refining Co., Ia., 181 N. W. 664.

15.——Sale of Stock to Officers.—An officer or director of a corporation, or a general manager who is neither a stockholder, officer, or director, but merely an employee of the company, does not sustain a fiduciary relation to an individual stockholder with respect to his stock, and consequently may purchase stock from him with the same freedom as though he were a stranger, and in so doing the mere failure to disclose information as to the value of the stock or the fact that he will be able to dispose of it at a higher price will not render him liable, in the absence of actual fraudulent misrepresentations. — Stout v. Cunningham, Idaho, 196 Pac. 208.

16. **Deeds**—Undue Influence.—Old age, eccentricity, or even partial impairment of the mental faculties is not necessarily sufficient to set aside a deed; but if the grantor had sufficient mental capacity to comprehend the nature of the transaction and its meaning and effect, and was able to protect his own interets, the deed will not be set aside.—Campbell v. Freeman, Ill., 130 N. E. 319.

17. **Electricity**—Negligence.—Where a high-tension electric wire was maintained by an independent contractor on the premises of a manufacturing company to supply power to it, the manufacturing company is not liable for the death of boy who came in contact with bare wire thrown over the power wire by some unknown person, on the theory that it negligently failed to guard the wire, since such failure was not the proximate cause of death.—Golson v. W. F. Covington Mfg. Co., Ala., 87 So. 439.

18. **Estoppel**—Deficiency Judgment.—If mortgagor, in reliance upon assurances of mortgagee's agent, that there would be no deficiency judgment against him, had just grounds to remain inert, without further securing himself, or without protecting himself against a deficiency, the mortgagee was estopped to claim under a deficiency judgment; the mortgagor permitting a foreclosure by sale in a jurisdiction where the practice was strict foreclosure.—Witherell v. Kelly, N. Y., 187 N. Y. S. 43.

19. **Fixtures**—Electric Elevator.—An electric elevator, installed in the landlord's storehouse by a tenant as a substitute for an elevator previously built, the elevator being permanently installed on a cement or concrete foundation, the several floors through which it passed being materially modified so it could not be removed without injury to the freehold, the elevator was a fixture, no attempt to remove it having been made until after the forfeiture of the lease on the part of the tenant.—Alabama Machinery & Supply Co. v. Roquemore, Ala., 87 So. 435.

20.——Pavement.—Where a tenant of a tract or strip of land during a term of years laid down blocks of stone, so as to compose or make a pavement rendering access to the premises by vehicles conveying loads more easy and convenient, the pavement was not removable as a trade fixture.—City of Savannah v. Standard Fuel Supply Co., Ga., 106 S. E. 176.

21. **Gifts** — Revocation. — Where decedent, when going to his daughter's home, gave her a suit case with words indicating the present passing of title to the suit case and its contents, the fact that on reaching her home he inquired for the suit case and it was brought to his room, where it stayed until his death the next day, was insufficient to show a revocation of the gift.—In re La Grange's Estate, Iowa, 181 N. W. 807.

22. **Husband and Wife**—Admissibility of Letters.—In an action for alienation of a wife's affections, letters, written by the wife to her husband previous to their separation, are admissible for plaintiff to show that he enjoyed the affections of the wife, though they were declarations made out of the defendant's presence.—Curtis v. Miller, Pa., 112 Atl. 747.

23. **Insurance**—Employment of Minor.—Employers' liability policy held to include loss from injury to minor employed in violation of law, though not covered by Workmen's Compensation Act.—Edward Stern & Co. v. Liberty Mut. Ins. Co., Pa., 112 Atl. 865.

24.——Loss in Transit.—Uncleaned wool "in the grease," purchased by insured in California and gathered at Stockton in a public scouring mill for cleaning and grading preliminary to actual shipment to insured in Boston, while in such mill, where it was damaged by flood, held not covered by policy of insurance protecting wool "at and in transit" against "risks in transportation," expressly providing that it was "to cover only while goods are actually in transit" and "while in transit"; "transit" and "transportation" involving actual movement of the goods, particularly in view of the use of the word "actually," which added something to the sense.—Koshland v. Columbia Ins. Co., Mass., 130 N. E. 41.

25.——False Statement.—False statement, in application for membership in fraternal insurance society, that applicant was not engaged directly or indirectly in the saloon business, was such a material representation, under Ky. St. § 639, as to avoid the certificate issued to him; the declared policy of the society, as shown by its constitution and by-laws, being to exclude from its membership persons so engaged.—Beck v. Sovereign Camp W. O. W., Ky., 228 S. W. 427.

26.——Injuries During Initiation into Lodge.—Subordinate lodges of the Woodmen of the World are agents of the Sovereign Camp in initiating and making members of the order, and the acts of a subordinate camp are binding upon the Sovereign Camp, even though such acts are not authorized by the Sovereign Camp, and the Sovereign Camp may be liable in damages in tort for injuries sustained, both compensatory and punitive.—Derrick v. Sovereign Camp ,W. O. W., S. C., 106 S. E. 222.

27.——Military Service.—Under policy excluding death in military service, death from drowning as reult of collision of transports held excluded.—Railey v. United Life & Accident Ins. Co., Ga., 106 S. E. 203.

28.——Military Service.—Where the Constitution and laws of a fraternal benefit society, made a part of a certificate by the application, provided that no officer, employee, or agent could waive any conditions or provisions, and a certificate required the holder when entering the military or naval service to notify the home office and pay an additional premium, in default of which it provided for a reduction of the insurance, a statement by an agent to the applicant that the society had waived payment of such additional premium was not a waiver of the conditions in the certificate.—Sovereign Camp, W. O. W. v. Ricks, Ga., 106 S. E. 185.

29.——Misappropriated Premiums. — Notwithstanding the by-laws of a fraternal insurance society provided that local agents were agents only of the local chapter, yet, where the secretary of the local chapter was intrusted with the collection of premiums, payment to the secretary is binding on the association, though the secretary may have improperly disposed of the money without the knowledge of the member.—Vidich v. Occidental Mut. Benefit Ass'n, Kan., 196 Pac. 242.

30.——Prohibited Provisions.—Under Rev. St. 1911, art. 4742, subd. 3, providing that no life

insurance policy shall contain any provision for settlement for less than the amounts insured on the face of the policy, plus dividends and less indebtedness and premiums, a policy cannot contain the prohibited provisions, though issued on the industrial plan in small amounts and for weekly or bi-weekly premiums.—First Texas State Ins. Co. v. Smalley, Tex., 228 S. W. 550.

31.——Regular Army.—The term "regular army," as used in an insurance certificate providing 40 per cent. only of claim should be paid if insured should engage in any of the following occupations, viz., railway switchman, soldier in regular army in time of war, etc., meant a soldier in the regular army of any country, the term "regular army" not being construable with reference to the congressional classification of the military organizations of the United States.—Huntington v. Fraternal Reserve Ass'n of Oshkosh, Wis., 181 N. W. 819.

32.——Robbery in Locked Vault.—An insurance policy covering loss by robbery of money and securities within the safe or vault insured, by compelling, under threat of personal violence, an officer of the assured to unlock the safe or vault, covers a robbery committed by taking securities from an unlocked safe, which was within a locked vault, where the robbers compelled the cashier to open the vault, although the loss could not have been covered, if the vault had also been unlocked.—Mer Rouge State Bank v. Employers' Liability Assur. Co., U. S. C. C. A., 270 Fed. 567.

33. **Intoxicating Liquors**—Court Cannot Say 2.75 Per Cent. Liquor is Intoxicating.—The court cannot say as a matter of law that beverages containing not more than 2.75 per cent. alcohol by weight, or less, is intoxicating, and therefore cannot hold that the Walker Act of New York, permitting the sale of such beverages, violates the Eighteenth Amendment to the Constitution.—Ex parte Finegan, U. S. D. C., 270 Fed. 665.

34.——Medicinal Purposes.—Defendant could not be convicted of manufacturing spirituous liquor with more than 1 per cent. alcohol under the Dean Law, if he manufactured the liquor for medicinal purposes, notwithstanding his failure to secure a permit from the comptroller of public accounts or to comply with the other conditions specified in sections 7-11, since such failure did not make him guilty of manufacturing liquor for an improper purpose.—Burciago v. State, Tex., 228 S. W. 563.

35.——State Law.—Court did not err, in a prosecution for violation of the prohibition law, in charging the penalty under the state law, instead of the punishment as prescribed in the Volstead Act of Congress.—Reece v. State, Tex., 228 S. W. 562.

36. **Joint Adventures**—Right of Action.—Complaint alleging contract between plaintiff and defendant, whereby defendant agreed to pay plaintiff one-half of any commission which might be paid to it by a certain corporation for negotiating the purchase of steamships by such corporation, that plaintiff and defendant thereafter procured the purchase of three steamships by such corporation, that such corporation paid the defendant 5 per cent. of the purchase price as commission, and that defendant refused to pay plaintiff one-half thereof, held to show a joint adventure, entitling plaintiff to an accounting, and not merely a contract of employment.—Kraemer v. World-Wide Trading Co., N. Y., 187 N. Y. S. 18.

37. **Landlord and Tenant**—Covenant Against Assignment of Lease.—A covenant against assignment or sub-letting of a lease without the written consent of the lessor is not breached by an assignment by operation of law in the event of the bankruptcy of the lessee.—In re Prudential Lithograph Co., U. S. C. C. A., 270 Fed. 469.

38.——Order of City Department.—Assignee of lease providing that the tenant at her own expense should fully satisfy all muincipal and United States regulations, laws, and ordinances affecting the demised premises, who was notified of an order of the department of water supply, gas, and electricity of the city of New York, requiring the removal of violations in electrical equipment in the building, and who was in occupation of the premises and at all times advised of the repairs being made by the lessors to comply with the order, and who did not object, became liable to the lessors for the expense incurred by them in removing the violations specified in the order, but the lessee, who never received notice of the order or the removal of the violations, is not liable for such expense.—United States Trust Co. v. Blake, N. Y., 187 N. Y. S. 7.

39. **Libel and Slander**—Release From Liability.—Request by ex-employee held to release employer from liability on account of information furnished.—Burdett v. Hines, Miss., 87 So. 470.

40. **Life Estates**—Improvements.—While as a general rule a life tenant is not entitled to compensation from the remaindermen for the enhancement of the property by his improvements, a life tenant, or one holding under him, who was in possession of the property with a bona fide belief he owned the fee, can recover for improvements thereon which enhanced the value of the remainder.—Harriett v. Harriett, N. C., 106 S. E. 221.

41. **Limitation of Actions**—Laches May Be Invoked Against Government.—Where the bar of limitations under Act March 3, 1891 (Comp. St. § 4992), would be effective against a suit to cancel patents to coal lands, unles the equitable principle suspending the running of limitations in case of fraud until discovery of the fraud be applied, the doctrine of laches in discovering the fraud, which is an inherent ingredient of such equitable principle, may be invoked against the United States.—United States v. Diamond Coal & Coke Co., U. S. S. C., 41 Sup. Ct. 335.

42. **Malicious Prosecution**—Liability of Witness.—In an action for malicious prosecution brought against a mother and her son, where it appeared that the prosecution against plaintiff for fraudulently obtaining money from the son was instituted by the mother, and there was no evidence that the son aided or encouraged her to begin the prosecution, though he was present when she threatened plaintiff with prosecution, and though he testified as a witness when duly summoned, a judgment against the son must be set aside.—McNamara v. Pabst, Md., 112 Atl. 812.

43. **Master and Servant**—Course of Employment.—Cleaner employed by manufacturing company at its mill, also a member of the volunteer fire department of the city receiving from the organization a salary of $65 a year, permitted by his employing company to leave his work for a fire without loss of pay, held not to have suffered an injury arising out of and in the course of his employment to entitle him to compensation under the Compensation Act, when answering fire alarm.—White v. Eastern Mfg. Co., Me., 112 Atl. 841.

44.——Injury While Demonstrating Ability.—An applicant for employment, who was requested by the proposed employer to demonstrate his ability to operate a machine before being employed, and who was injured while preparing the machine for operation, had not yet become an employee, and is not entitled to compensation under the Workmen's Compensation Law.—Lederson v. Cassidy & Dorfman, N. Y., 187 N. Y. S. 50.

45.——Interstate Commerce.—The plaintiff's intestate, an engineer, was taking a number of empty cars from a point on a spur line to a yard on the main line in the same state, where they were to be put upon a siding and used where convenience required. They had no present destination. It is held that the deceased was not employed in "interstate commerce" and was not within the provisions of the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665).—Kraemer v. Chicago & N. W. Ry. Co., Minn., 181 N. W. 847.

46.——Res Ipsa Loquitur.—In an action under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665) for injuries to a railroad's employee from a cave-in, the doctrine of res ipsa loquitur has no application because of the relation of master and servant between the parties and the fact that the circumstances and the accident in no wise excluded all defen-

sive inferences.—See v. Chicago, B. & Q. R. Co., Mo., 228 S. W. 518.

47.——Safe Vehicles.—A packing company employed a transfer company to convey its employees to and from their work, and directed and controlled the transportation. Held that, having assumed the responsibility of the transportation of its employees, the company owed them the duty to provide vehicles that were reasonably safe, and the obligation to see that the drivers should exercise reasonable care in operating them.—Phillips v. Armour & Co., Kan., 196 Pac. 245.

48. **Mortgages**—Constructive Notice.—Under a deed of trust covering land divided into lots, and providing that the mortgagor might sell lots by warranty deed, and that the trustee would execute quitclaim deeds on deposit of $50 for each lot, one to whom the trustee conveyed under power of sale on default was not charged with constructive notice of the equities of those who had purchased lots on contract, and who had neither a deed nor a bond for title on record.—Shehane v. Greer, Ga., 106 S. E. 83.

49. **Municipal Corporations**—Claims of Materialmen.—Interest on claims of materialmen, who furnished material for work on the Boston Public Library, held to run as against the contractor's surety from filing of their intervening petitions, and not from filing of their sworn statements of claim with the trustees of the library.—Otis Elevator Co. v. Long, Mass., 130 N. E. 265.

50.——Pier Site District.—The bonds issued by the state pier site district incorporated under Sp. Laws 1919, c. 117, which includes the cities of Portland and South Portland, are not debts of the city of South Portland, within the meaning of Const. Amend. 34, limiting the indebtedness of the city to 5 per cent. of its valuation, though such bonds are to be paid in part by taxes levied on the property within the city, since the district is a municipal corporation distinct from the city.—Hamilton v. Portland State Pier Site Dist., Me., 112 Atl. 836.

51.——Waste Steam.—Where a municipality, after devoting waste steam from its water and lighting plant to the heating of municipal buildings, discovered that there was a surplus, it might contract to supply private individuals with steam, although, of course, if a deficiency occurred, it could not be held liable, and such an agreement is not objectionable as ultra vires, but amounts to no more than the sale of an otherwise waste product.—N. E. Burkitt Motor Co. v. City of Stuart, Iowa, 181 N. W. 762.

52. **Negligence**—Licensees.—Boys bathing in a river below defendant's dam, where defendant owned the bed and banks of the stream, had no higher standing than that of licensee, where, at most, defendant passively acquiesced in such conduct by the boys.—Prondecka v. Turners Falls Power & Electric Co., Mass., 130 N. E. 386.

53. **Parent and Child**—Employment of Minor.—In an action by a father for injuries to his minor son, under and by reason of employment by defendant of the son in dangerous work without plaintiff's consent, an oral charge that, if it was brought home to plaintiff's knowledge that his son was working for defendant, and he did nothing, he thereby assented to the employment, held proper.—Allen v. Alger-Sullivan Lumber Co., Ala., 87 So. 442.

54. **Physicians and Surgeons**—No Relation of Master and Servant Between.—The relation of master and servant cannot exist between physicians and surgeons who are not X-ray specialists themselves and the X-ray specialist or roentgenologist whom they employ to assist them in the treatment and diagnosis of diseases, even though the X-ray specialist works at a hospital in the X-ray department established by the physicians and surgeons for such work.—Runyan v. Goodrum, Ark., 223 S. W. 397.

55. **Railroads**—Negligence.—A railroad is not liable for injuries to a pedestrian who, in seeking to cross tracks at a plank crossing, left the provided cement sidewalk on account of darkness and fog, stepped onto a triangular piece of ground belonging to the railroad and covered with cinders, and walked across it until he reached a stone retaining wall, the top of which was at the level of the cinder covered lot, and fell 15 feet into the bed of a creek, sustaining serious injuries. — Hildebrand v. Hines, Pa., 112 Atl. 875.

56. **Reformation of Instruments**—Mistake in Deed.—A purchaser of land who has knowledge of a mistake in the deed of his grantor, and of the true intent and design thereof, is not a bona fide purchaser for value, and stands in no better position than the original parties. The deed may be reformed as to him.—Stickley v. Thorn, W. Va., 106 S. E. 240.

57. **Religious Societies**—Mortgage of Realty.—Under Religious Corporations Law, § 5, the trustees of a religious corporation having a congregational form of government have no power to initiate proceedings to mortgage the real property of the corporation, without the consent of the members given by a majority vote at a meeting, or in some manner in accordance with legally adopted by-laws.—In re Beth Israel of Bronsville, N. Y., 187 N. Y. S. 36.

58. **Removal of Causes**—A State is Not a "Citizen."—In a controversy between a state and a citizen of another state, the federal court does not acquire jurisdiction to compel removal from the state court on the ground of diversity of citizenship, under U. S. Comp. St. § 1010, since a state is not a citizen.—People v. City of St. Louis, Ill., 130 N. E. 366.

59. **Sales**—Condition Precedent.—A provision of a contract of sale requiring the buyer to furnish the seller a bank guaranty was not performed by arranging with a bank to guarantee payment of a draft by the seller for the purchase price without actually furnishing the guaranty contracted for.—Newton v. Chemcraft Co., Ga., 106 S. E. 194.

60.——Temporary Embargo.—Purchaser's request to withhold shipment of lumber because of temporary embargo held not to justify immediate cancellation.—Tallahatchie Lumber Co. v. Cecil Lumber Co., Miss., 87 So. 449.

61. **Seamen**—Measure of Damages.—Where seaman received injuries through accident, without fault of the ship, all he could recover, under a claim that employer had failed to furnish him with reasonably good medical attention by refusing to land at a certain port, was for the additional pain or suffering and injury that resulted from defendant's failure to furnish reasonable medical attendance.—Falk v. Thurlow, N. Y., 187 N. Y. S. 57.

62. **Telegraphs and Telephones**—License Tax.—Where a telegraph company, whose franchise to use the streets of a city subjected it to further regulations, licensing, and taxation, paid a license tax from 1903 to 1914, an allegation, in a suit to collect the tax for subsequent years, that the tax was paid through mistake and inadvertence of its clerical force, is not a sufficient explanation, without more.—Postal Telegraph-Cable Co. v. City of Fremont, U. S. S. C., 41 Sup. 279.

63. **War**—Constructive Service.—That defendants were domiciled in Germany and Austria, and, owing to war between those countries and the United States, it was impossible to carry out the provisions of Chancery Act, § 12, as to constructive service by reason of noncommunication between the countries, will not affect the validity of a decree based on constructive service, for the presumption of notice is not rebuttable.—Chapman v. Northern Trust, Ill., 129 N. E. 836.

64. **Wills**—Undue Influence.—Testator may dispose of his estate according to his own judgment, if mentally capable of making a will and the will is not the product of undue influence, and the law will not render it nugatory because it disappoints entirely reasonable expectations of relatives.—Watson v. Young Women's Christian Assn., Md., 112 Atl. 616.

65.——Undue Influence.—The fact that a brother of testator procured the attorney to write the will, procured the attesting witnesses, and excluded all persons from the room while the will was being written is not alone sufficient testimony of undue influence, fraud, or coercion on the part of the brother of the testator—Ward v. Ward, Miss., 87 So. 153.